

SENATE, No. 2244

[Senate, January 13, 2010 – Text of the Senate amendment (Ways and Means) to the House Bill relative to a wastewater management district in the town of Harvard H4407.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT RELATIVE TO A WASTEWATER MANAGEMENT DISTRICT IN THE TOWN OF HARVARD.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- 1 SECTION 1. As used in this act, the following words shall have the following meanings
- 2 unless the context clearly requires otherwise:
- 3 “Board of health”, the board of health of the town of Harvard.
- 4 “Commission” the Harvard wastewater management district commission established in
- 5 section 2.

6 “Costs”, all costs and expenses of the planning, design, acquisition, construction,
7 installation, reconstruction, alteration, extension, improvement or enlargement of the
8 wastewater management system including, without limitation, costs of labor, materials,
9 professional services, consulting services, equipment, grinder and ejector pumps, supplies,
10 machinery, structures, all rights in real and personal property, costs of demolitions or
11 relocations, costs of removal or relocations of public utilities, financing charges and expenses
12 and debt service costs relative to the wastewater management system.

13 “Facility”, a facility as defined in 310 CMR 15.002 as of May 1, 2009.

14 “Harvard wastewater management service area”, that portion of the town of Harvard
15 shown on a plan entitled “Proposed Sewer Service Plan, Town of Harvard, Mass. prepared for
16 Town of Harvard”, dated 11/19/2008 and revised on 3/30/2009 prepared by Norfolk Ram in
17 Association with Weston & Sampson and filed in the office of the town clerk of the town of
18 Harvard or as such service area may be modified by majority vote of the town at a town
19 meeting, upon the recommendation of the commission.

20 “Revenues”, all rates, fees, charges, rents, proceeds of loans, grant funds, insurance
21 proceeds, investment earnings and other receipts derived from the operation of the wastewater
22 management system.

23 “Town”, the town of Harvard.

24 “Wastewater”, greywater and blackwater from domestic, municipal and other
25 governmental and institutional uses; provided, however, that wastewater shall not include
26 industrial waste as defined in 310 CMR 15.002.

27 “Wastewater management system”, the wastewater collection, conveyance, treatment
28 and disposal systems serving more than 1 facility to be constructed or to be in the possession of
29 and under the jurisdiction and control of the commission, including all components thereof.

30 SECTION 2. There shall be in the town of Harvard the Harvard wastewater management
31 district commission, which shall have all of the rights, powers and duties specified in this act
32 and the General Laws relating to town boards and shall be subject to such instructions as the
33 town may, from time to time, impose by vote of its town meeting.

34 Except as otherwise provided in this act, the commission shall consist of 3 members,
35 each of whom shall be a resident of the town, at least 1 of whom shall reside in the Harvard
36 wastewater management service area. The members shall be appointed by the board of
37 selectmen within 60 days after the effective date of this act; provided, however, that the design
38 of the wastewater management system to be constructed in the service area shall have been
39 approved by vote of the town at a town meeting. Of the members first appointed, 1 shall serve
40 in office for a term expiring on June 30 in the year following the effective date of this act and 1
41 shall serve for a term expiring on June 30 in the second year following the effective date of this
42 act and 1 shall serve for a term expiring on June 30 in the third year following the effective date
43 of this act. Thereafter, the board of selectmen shall appoint successors for terms of 3 years or, in
44 the case of an appointment to fill a vacancy, for the unexpired term. Members of the
45 commission shall be eligible for reappointment and may be removed at any time for cause by
46 the board of selectmen. Two members of the commission shall constitute a quorum and the
47 affirmative vote of 2 members shall be necessary for any action taken by vote of the
48 commission. No vacancy in the membership of the commission shall impair the right of a
49 quorum to exercise the powers of the commission.

50 The commission shall annually elect 1 of its members as chair. The members shall serve
51 without compensation. The members of the commission shall not be municipal employees
52 within the meaning of paragraph (g) of section 1 of chapter 268A of the General Laws.

53 The commission shall have all of the rights, authority and powers necessary or
54 convenient to carry out this act including, but not limited to, the rights, authority and power to:

55 (a) hire, employ or engage the services of engineers, land surveyors, consultants and
56 such other experts as it deems necessary and determine their duties;

57 (b) construct, install, improve, extend, enlarge, operate, maintain, repair and reconstruct
58 the wastewater management system;

59 (c) hold, manage, maintain, control and regulate the use of town-owned property, real or
60 personal, tangible or intangible, or interests therein, for the purposes of this act, consistent with
61 all requirements of the General Laws;

62 (d) adopt rules and regulations relative to the use of and connection to the wastewater
63 management system, including the types of wastewater that may be discharged into the system,
64 subject to the approval of the board of selectmen; provided, however, that the commission may,
65 by rule or regulation, prescribe civil penalties in accordance with section 10 of chapter 83 of the
66 General Laws for the violation of any such rule or regulation; provided further, that such
67 penalties shall not exceed \$300 per day for each such violation in accordance with section 21 of
68 chapter 40 of the General Laws; provided further, that prior to adopting or amending any such
69 rule or regulation, the commission shall hold a public hearing, notice of which shall be placed in
70 a newspaper of general circulation in the town once a week for 2 consecutive weeks, the first
71 notice of which shall be published not less than 14 days before the public hearing; provided

72 further, that the notice shall include the time, date and place of the public hearing; and provided
73 further, that rules and regulations adopted or amended shall be filed in the office of the town
74 clerk and shall take effect upon such filing;

75 (e) apply for, receive, accept, administer, expend and comply with the conditions of any
76 grant, gift, loan, donation or appropriation of any money or property in aid of the purposes of
77 this act;

78 (f) sell, exchange, transfer or otherwise dispose of any surplus personal property,
79 tangible or intangible, consistent with the requirements of the General Laws;

80 (g) contract for and procure wastewater management, treatment and disposal from any
81 person, private or public corporation or government agency or entity, consistent with the
82 General Laws, when necessary or convenient for the operation of the wastewater management
83 system;

84 (h) use and expend monies borrowed or appropriated by the town for the purposes of this
85 act;

86 (i) make contracts of every name and nature and to execute and deliver all instruments
87 necessary or convenient for carrying out its duties;

88 (j) create an overall wastewater management policy and plan for the Harvard wastewater
89 management service area, which shall be consistent with the town's master plan and open space
90 and recreation plan;

91 (k) fix, revise, charge, collect and abate fees, rates, rents, assessments, delinquency
92 charges and other charges for wastewater collection, treatment and disposal services, facilities

93 and commodities for facilities connected to the wastewater management system; provided,
94 however, that:

95 (i) subject to section 3, such fees, rates, rents, assessments, delinquency charges and
96 other charges of general application shall be adopted and revised by the commission at
97 least annually in accordance with procedures to be established by the commission for
98 assuring that interested persons are afforded notice and an opportunity to be heard;
99 provided, however, that the commission shall hold a public hearing on its schedule of
100 fees, rates and charges or any revision thereof prior to adoption, notice of which shall be
101 delivered to the board of selectmen of the town and be published in a newspaper of
102 substantial circulation in the town at least 1 month in advance of the hearing; provided
103 further, that no later than the date of such publication, the commission shall make
104 available to the public and deliver to the selectmen and the finance committee of the
105 town the proposed schedule of fees, rates and charges; provided further, that the
106 commission may combine its fees, rates and other charges for wastewater services
107 provided by it in a single schedule of charges; provided further, that fees, rates, rents,
108 assessments, abatements and other charges established by the commission shall not be
109 subject to supervision or regulation by any department, division, commission, board,
110 bureau or agency of the commonwealth; provided, however, that such schedule shall
111 provide for the metering, monitoring and other measuring of and charging for
112 wastewater management services provided by the commission to consumers of such
113 services in the service area; provided, however, that no betterment or special assessment
114 shall be made by the commission under chapters 80 or 83 of the General Laws or any
115 other provision of law against property owned by the town, the commonwealth, any

116 political subdivisions thereof or the federal government or any agency thereof. In lieu of
117 the town paying a betterment assessment or special assessment for wastewater
118 management services provided by the commission to the town, the town shall reduce the
119 amount it receives from its General Fund through advances or loans or the town shall
120 make payments or transfer from said General Fund an amount equal to the betterment or
121 special assessment; and

122 (ii) subject to section 3, the fees, rates, rents, assessments and other charges so
123 established by the commission shall be set such that the aggregate amount of revenue
124 collected is sufficient to: (1) pay the current expenses of the commission; (2) pay the
125 principal of, premium, if any, and interest on bonds or other evidences of indebtedness
126 issued by the town for the commission as the same shall become due and payable; (3)
127 create and maintain such reasonable reserves as may be reasonably required by any trust
128 agreement or resolution securing bonds; (4) provide funds for paying the cost of all
129 necessary repairs, replacements and renewals of the wastewater management system;
130 and (5) pay or provide for any amounts which the commission may be obligated to pay
131 or provide for by law or contract, including any resolution or contract with or for the
132 benefit of the holders of bonds issued for the commission;

133 (l) exercise the powers and privileges of, and be subject to the limitations on cities and
134 towns provided by sections 1 to 24, inclusive, and sections 27 to 29, inclusive, of chapter 83 of
135 the General Laws, insofar as those sections may be applicable and consistent with this act; and

136 (m) do all things as may be necessary for or incident to carrying out the foregoing
137 powers or the powers expressly granted or necessarily implied in this act; provided, however,

138 that nothing in this act shall impose any duty on the commission to maintain groundwater levels
139 within or without the boundaries of the town.

140 SECTION 3. The town may to establish an Enterprise Fund in accordance with section
141 53F½ of chapter 44 of the General Laws for the operation of the wastewater management
142 system. Not later than 1 year after the effective date of this act and annually thereafter, the
143 commission shall prepare a proposed capital improvement program for the next 3 succeeding
144 fiscal years of the commission and shall adopt an operating and capital improvement budget for
145 the next succeeding fiscal year. Such program and budget shall include a description of the
146 operations and projects proposed to be undertaken during such periods, the costs proposed to be
147 incurred in connection with such operations and projects, the method of financing such costs
148 and an estimate of the effect, if any, that such costs will have on the current or projected fees,
149 rates, assessments and other charges of the commission. The program and budget shall be
150 annually prepared and the budget shall be presented for approval to the town meeting. The
151 commission shall submit its operating capital budget to the board of selectmen and finance
152 committee of the town for review and recommendation and all funds expended by the
153 commission shall be subject to appropriation by town meeting. The commission shall hold at
154 least 1 public hearing on the proposed capital improvement program, capital budget and
155 operating budget prior to adoption, which hearing may be combined with the hearing required
156 pursuant to subclause (i) of clause (k) of the fourth paragraph of section 2, notice of which shall
157 be delivered to said board of selectmen and be published in a newspaper of substantial
158 circulation in the town at least 1 month in advance of the hearing. No later than the date of such
159 publication, the commission shall make available to the public and deliver to the board of
160 selectmen copies of the proposed program and budgets.

161 SECTION 4. The town may incur debt for development of the wastewater management
162 system in accordance with chapter 44 of the General Laws. Notwithstanding section 17 of said
163 chapter 44, the town may make temporary loans for a period of not more than 5 years in
164 anticipation of the money to be derived from the sale of bonds for the construction and
165 installation of the wastewater management system in the Harvard wastewater management
166 service area. The principal of, premium, if any, and interest on all notes and bonds issued by the
167 town on behalf of the commission, unless otherwise provided by the town, shall be payable
168 solely from the revenues derived from the wastewater management system, but shall be general
169 obligations of the town for payment of which the full faith and credit of the town shall be
170 pledged.

171 SECTION 5. The commission shall have the benefit, without further acceptance by the
172 town, of section 13B of chapter 80 of the General Laws and sections 16A, 16B and 16E of
173 chapter 83 of the General Laws. Applications for abatements in accordance with said section
174 16E of said chapter 83 shall be made to the commission within 30 days after the date of the
175 demand.

176 SECTION 6. Notwithstanding section 13 of chapter 80 of the General Laws: (a) the
177 board of assessors of the town may apportion all betterment assessments or unpaid balances
178 thereof relative to the wastewater management system in the Harvard wastewater management
179 service area into equal portions of up to 30 to be paid annually for a period of up to 30 years
180 after such assessments first appear on the affected landowner's real estate tax bill; and (b)
181 betterment assessments made by the commission shall, at the election of the commission, bear
182 interest at 1 rate of up to 5 per cent per annum or, at a rate of up to 5 per cent above the rate of

183 interest chargeable to the town for the betterment project to which the assessments relate, from
184 the thirtieth day after betterment assessments have been committed to the town collector.

185 SECTION 7. (a) Notwithstanding section 3 of chapter 83 of the General Laws, the
186 commission shall not be required to connect any home, facility or lot to the wastewater
187 management system, except as provided in subsection (b). The commission shall not permit the
188 connection of: (i) a new facility; (ii) a facility that has been reconstructed resulting in an
189 increase of the gross floor area or in the number of bedrooms; or (iii) a facility that has
190 undergone a change in use to the wastewater management system or permit an increase in
191 design flow into the wastewater management system for a facility in existence on May 1, 2009,
192 if that new or changed facility could not have been constructed with a wastewater disposal
193 system or septic system which would comply with Title V of the State Environmental Code,
194 310 CMR 15.000, or other applicable regulations of the department of environmental protection
195 or if the increase in design flow could not have been permitted in the absence of a connection to
196 the wastewater management system, unless the commission, with the approval of the board of
197 selectmen, determines that such connection is necessary for the health, welfare or safety of the
198 town or creates a demonstrable benefit to the town.

199 (b) A facility within the Harvard wastewater management service area that is served by a
200 subsurface sewage disposal system which is in a state of failure as determined by the board of
201 health or the department of environmental protection shall be connected to the wastewater
202 management system within 6 months after the owner of the facility receives written notice from
203 the commission that the wastewater management system is complete and operational.

204 (c) An owner of a facility who is aggrieved by a decision of the commission relative to
205 such owner's application to voluntarily or involuntarily connect such owner's facility to the
206 wastewater management system may appeal the commission's decision to the board of
207 selectmen by filing a written petition with the board of selectmen within 60 days after receipt of
208 the commission's written decision. The board of selectmen may hold a hearing on the petition
209 and consult with the board of health and shall render a written decision thereon affirming,
210 modifying or reversing the commission's decision within 90 days after receipt of the petition or
211 such longer period of time as may be agreed to by the board of selectmen and the petitioner. If
212 the board of selectmen fails to act on a petition within that time, the commission's decision shall
213 be deemed to be affirmed.

214 SECTION 8. Insofar as the provisions of this act are inconsistent with the provisions of
215 any general or special law, administrative order or regulation, or any by-law, rule, regulation or
216 code of the town, other than rules and regulations or orders of the board of health or by-laws of
217 the town which require homes or facilities to be connected to the wastewater management
218 system involuntarily, the provisions of this act shall be controlling.

219 SECTION 9. This act shall take effect upon its passage.